



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sletager, Inc.

File: B-240789.6

Date: October 11, 1991

Ralph Sletager for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly found awardee's price reasonable for a contract competitively solicited under section 8(a) of the Small Business Act, as awardee's price was less than the government's estimated fair market price.

DECISION

Sletager, Inc. protests the award of a contract to American Mechanical, Inc./Aoki Brothers Construction Company Joint Venture, under request for proposals (RFP) No. DAHC76-90-R-0018, issued by the Department of the Army as a competitive set-aside under section 8(a) of the Small Business Act. Sletager, a small business concern ineligible as an 8(a) contractor, claims that the agency awarded the contract for an amount grossly exceeding the fair market price. The protester seeks resolicitation of the requirement without the 8(a) restriction.

We deny the protest.

The RFP contemplated award of a fixed-price, indefinite quantity contract for a 1-year base period and two option periods. The RFP, which was for the maintenance of family housing quarters at Forts Wainwright, Richardson, and Greely, Alaska, combined requirements for quarters cleaning, painting, and carpeting for the first time. The agency historically solicited these requirements separately, restricting quarters cleaning to 8(a) contractors, painting to small business concerns, and carpeting to small business and small disadvantaged business concerns.

Three offerors, Marengo, Inc., American Mechanical and another firm, submitted proposals for the pre-negotiation evaluation,

after which the agency narrowed the competitive range to Marengo and American Mechanical. On April 30, 1990, Marengo submitted a best and final offer (BAFO) in the aggregate amount of \$21,893,279.96; American Mechanical's BAFO was \$17,730,388.33; and the government's estimated fair market price was \$18,067,463.48. Award was made to American Mechanical after the agency determined that its price, which was less than the government's estimated fair market price, was fair and reasonable. Sletager protests that the agency improperly found the awardee's price reasonable.

An agency may not award an 8(a) contract if the price of the contract results in a cost to the contracting agency which exceeds a fair market price. Federal Acquisition Regulation (FAR) § 19.806(b).^{1/} The contracting officer has discretion to determine price reasonableness in a small business or other set-aside, and we will not disturb such a determination unless it is unreasonable. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. In making such a determination, the contracting officer may consider such factors as the government estimate, the procurement history for the solicited supplies or services, the current market climate, and the "courtesy bid" of an otherwise ineligible large business bidder. Vitronics, Inc., 69 Comp. Gen. 170 (1990), 90-1 CPD ¶ 57.

The record reflects that American Mechanical's price was below the government's estimate. Thus, the agency could fairly find the awardee's price reasonable, presuming the accuracy of the government estimate. United Power Corp., B-239330, May 22, 1990, 90-1 CPD ¶ 494; Artisan Elecs. Corp., B-231700, Aug. 23, 1988, 88-2 CPD ¶ 174.

Sletager has not argued that the government's estimated fair market price is inaccurate or unreasonably high. Instead, Sletager urges that an agency may not depend upon an estimated fair market price in determining price reasonableness because the FAR definition of a fair market price does not refer to government estimates. Sletager asserts that the true index of a fair market price is the cost of preceding competitive contracts. Sletager offers as substantive evidence prices from its own December 1988 contract for interior painting at Forts Wainwright, Richardson, and Greely.

The protester is incorrect that the FAR definition of a fair market price excludes government estimates. FAR § 19.202-6 requires contracting agencies to estimate the fair market


^{1/} The FAR defines a "fair market price" as a price based upon reasonable costs under normal competitive conditions, not on the lowest possible cost. FAR § 19.001.

price of 8(a) contracts, and an agency may properly rely upon such an estimate in determining the reasonableness of prices obtained in a set-aside, Vitronics, Inc., supra. FAR § 19.202-6 directs the contracting agency to estimate the fair market price in accordance with FAR § 19.807, which sets forth procedures to ensure that the agency obtains a fair and reasonable estimate. This section requires agencies to consider recent award prices for comparable items of work, adjusted to reflect differences in costs, specifications, and other circumstances such as overhead. See 15 U.S.C. § 637(a)(3)(B)(iii) (1988). The agency's actions here are consistent with the prescribed approach.

Sletager primarily relies upon figures from its 1988 painting contract in contending the awardee's price is not reasonable. It is difficult to compare the apparently lower painting prices offered by the protester to those offered by American Mechanical, as Sletager has failed to make any adjustment for inflation. In addition, the Air Force asserts, and the record indicates, that certain requirements of the awardee's contract were not required in Sletager's contract, e.g., surface preparation and priming, and that Sletager's comparisons do not account for these added requirements. See U.S. Elevator Corp., B-224237, Feb. 4, 1987, 87-1 CPD ¶ 110. These preparation expenses do not appear negligible, particularly as the line items requiring such work cover the greatest area, in square feet, of any of the painting requirements--an area vastly greater than that required under Sletager's contract. Finally, Sletager has presented no evidence that the awardee's prices for the quarters cleaning and carpeting work were unreasonable, and the record confirms that the awardee's total evaluated price was less than the government cost estimate.

Based upon our review of the record, we cannot say that the Army's decision that the awardee's price was a fair market price was unreasonable.

The protest is denied.


for James Hinchman
General Counsel